

EXHIBIT 6

In the Matter Of:
DARRYL HOWARD vs CITY OF DURHAM
1:17-cv-00477-TDS-JEP

MEGHAN E. CLEMENT

September 10, 2019



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UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF NORTH CAROLINA
1:17-cv-00477-TDS-JEP

DARRYL HOWARD,

Plaintiff,

vs.

CITY OF DURHAM; DARRELL DOWDY,
in his individual and official
capacities; E.E. SARVIS, in his
individual and official capacities;
MICHELE SOUCIE, in her individual
and official capacities; SCOTT
PENNICA, in his individual and
official capacities; MILTON SMITH,
in his individual and official
capacities; AND other AS-YET-
UNKNOWN JOHN AND JANE DOE OFFICERS
& SUPERVISORS 1-10, in their
individual and official capacities,

Defendants.

~~~~~

DEPOSITION  
OF  
MEGHAN E. CLEMENT

September 10, 2019

10:18 a.m.

Poyner Spruill LLP  
301 Fayetteville Street, Suite 1900  
Raleigh, North Carolina 27601

Christy Johnson, Notary Public No. 201903900055



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1 They talk about sperm heads or sperm cells. There's  
2 very little talk specifically about intact sperm, so  
3 mostly it's based on my experience and -- yes.

4 Q. Okay. Now there are two different things  
5 that you reference here, the top sentence, under  
6 ordinary circumstances you refer to the time period  
7 following deposit?

8 A. Yes.

9 Q. And then the sentence below or at the  
10 bottom there you refer to the time prior to death.

11 A. Right.

12 Q. Do I understand correctly that the  
13 degradation of sperm stops or slows when a person  
14 dies?

15 A. It does because their activity usually --  
16 well, it -- degradation will still continue to go  
17 on, but other circumstances will generally preserve  
18 the sperm in -- in a body that is dead because  
19 they're not up walking around, they're not  
20 urinating, they're not wiping themselves, they're  
21 not -- so all of the physical activities of a live  
22 victim would increase that -- the -- the  
23 disappearance of intact sperm.

24 Q. Okay. So -- so the appropriate time to --  
25 more appropriate time to kind of determine when this

1 sperm was deposited or to -- to surmise when this  
2 sperm was deposited is looking at it from the time  
3 of her death?

4 MS. HOFFMAN: Objection.

5 Q. (Mr. Stevens) Correct?

6 A. Can you -- can you repeat that?

7 Q. If you are try -- when -- when trying to  
8 determine when the sperm was deposited in Nishonda  
9 Washington, the appropriate time to calculate from  
10 would be from the time of her death and move forward  
11 from there, correct?

12 MS. HOFFMAN: Objection.

13 A. I'm trying to make sure I understand what  
14 you're saying. I think, yes.

15 Q. (Mr. Stevens) I -- I mean, what you said  
16 there is that you -- you base your opinion upon a  
17 period of time prior to the time of her death?

18 A. Correct.

19 Q. Okay. And that was a considered decision?

20 A. Correct.

21 Q. Right. And so you would count back from  
22 whatever time it's determined that she died and, in  
23 your view, based upon your personal experience of  
24 examining these materials, you think it would have  
25 been deposited some 18 to 20 hours prior to that?



1 A. Yes.

2 Q. It appears that there was a sealed Ziploc  
3 bag that had both the red and purple tubes with  
4 liquid blood that was part of that -- that was part  
5 of what was gathered and looked at by the SBI. Is  
6 that correct?

7 A. Yes.

8 Q. Okay. And it appears that they kept  
9 stains from purple and a red-topped tube in a -- in  
10 a freezer.

11 A. Yes. Stains were made, yes. And then the  
12 stains, yes, were kept.

13 Q. And then it looks like they examined the  
14 two vaginal smear slides.

15 A. Yes.

16 Q. And they found no sperm and moderate  
17 epithelials?

18 A. Correct. That's a documentation.

19 Q. Okay. And then they determined that the  
20 swabs were bloody and dry.

21 A. Correct.

22 Q. And I guess that's consistent with the  
23 finding of the blood-tinged fluid from the autopsy.

24 A. Yes.

25 Q. And then I take it they did conduct the



1 acid phosphatase test because they didn't find  
2 sperm.

3 A. Apparently, yes.

4 Q. Or the finding of sperm was what led them  
5 not to bother with Nishonda, correct?

6 A. Correct.

7 Q. Okay. So they conducted the test for  
8 Nishonda and it was negative, correct?

9 A. This is Doris.

10 MS. HOFFMAN: Object ---

11 Q. (Mr. Stevens) I'm sorry ---

12 MS. HOFFMAN: --- Objection.

13 Q. (Mr. Stevens) --- for Doris.

14 A. Yes. It does say, "Swab," and it looks  
15 like it has a negative.

16 Q. Okay. What does that signify?

17 A. That the acid phosphatase presumptive test  
18 was negative.

19 Q. And what does that mean?

20 A. It means that they did not observe acid  
21 phosphatase.

22 Q. Okay. And what is the significance of  
23 that?

24 A. That there was not -- that component of  
25 semen wasn't identified, was not there.



1 Q. Is -- what is acid phosphatase again?

2 A. Acid phosphatase is an enzyme which is  
3 found in various body fluids, but it's found in  
4 higher concentrations in seminal fluid than other  
5 body fluids.

6 Q. Is that an enzyme that breaks down over  
7 time?

8 A. Sure. Yes.

9 Q. So are you less likely to find acid  
10 phosphatase the -- the longer from the time -- the  
11 period in which the sex occurred than more recently?

12 A. Certainly it will break down with time and  
13 depending on the environment. So if it remains wet,  
14 in a warm and wet environment, it will break down  
15 more readily than if it's, say, deposited on an  
16 article of clothing.

17 Q. And in this case, it's in a wet -- it was  
18 in a wet environment because it came from a vaginal  
19 swab, correct?

20 A. Correct.

21 Q. Which means it would break down more  
22 slowly?

23 A. No. It would break down more readily.

24 Q. Quickly.

25 A. Yes.





1 Q. How long after sex occurs can one find --  
2 can one have an acid phosphatase positive result  
3 from a vaginal smear or swab?

4 MS. HOFFMAN: Objection.

5 A. It can be found hours. I mean, probably --  
6 -- it used to be that if somebody was reporting a  
7 sexual assault that had occurred more than 24 hours  
8 previous, they wouldn't even bother collecting it  
9 because they wouldn't find evidence, typically, of  
10 any sexual assault activity. So generally, that was  
11 pretty much the outside, although often times the  
12 acid phos could potentially even not be detected  
13 again, prep -- maybe 20 -- 18 to 20 hour range, it's  
14 possible.

15 Q. (Mr. Stevens) Okay.

16 A. It depends on activity. It depend -- I --  
17 I mean there's so many variables. You know, if  
18 somebody's on -- menstruating, you know, that blood  
19 is going to be washing away the acid phosphatase, so  
20 you'd be more likely to find it on clothing than you  
21 would from a swab collected. So there's a lot of  
22 variabilities. But yes, it will degrade over time  
23 and if not collected within a fairly short period of  
24 time, less than a day, there's a chance -- a good  
25 chance you won't see it.



1 Q. Is it fair to say that sperm will last in  
2 the vagina and can be able to be found longer than  
3 acid phosphatase, as a general rule?

4 A. Yes. Generally you will have the ability  
5 to detect sperm heads longer than you would acid  
6 phosphatase.

7 Q. Okay. All right. We'll come back to  
8 that. Going on to the next page -- sorry?

9 MS. HOFFMAN: I'm sorry. I couldn't  
10 hear that for some reason.

11 Q. (Mr. Stevens) Okay. We're going on to  
12 the next page. They -- there was a microscopic  
13 review of the -- the rectal smear slabs for Doris  
14 Washington and they did not find sperm and they  
15 found -- what is it? It says, a ---

16 A. A few ---

17 Q. --- a few ---

18 A. --- to light.

19 Q. Few to light epithelials.

20 A. Epithelial cells and also no fecal debris  
21 and there was -- basically it's a poor smear.

22 Q. Does that mean it was -- it was -- it  
23 would be hard to find sperm even if it was there?

24 A. No. Generally with poor smear it means  
25 it's -- there's very -- there's no much material on



1 it.

2 Q. Okay. And again, the -- the acid  
3 phosphatase test was negative.

4 A. Correct.

5 Q. And then there were -- there was an  
6 examination of the oral smear slides and the same  
7 thing, no sperm found and light epithelials.

8 A. Correct. And light other cells.

9 Q. What would that -- what would the other  
10 cells be?

11 A. Potential yeast, fecal cell -- oh, no.  
12 Not fecal. This is just the oral. It could be  
13 yeast. It could be just other cell debris.

14 Q. So the -- the ultimate determination of  
15 the SBI was that there was no semen or sperm found  
16 anywhere in Doris's rape kit, correct?

17 A. Correct. From the smears.

18 Q. Right. And from the swabs, they were  
19 unable to find any -- the presence of any semen.

20 A. Correct. They tested it for acid  
21 phosphatase and it was negative.

22 Q. Okay. So the autopsy and the lab were  
23 consistent that, basically there was no male DNA  
24 found on Doris, correct?

25 A. On the ---



1 MS. HOFFMAN: Objection.

2 A. On the smears, correct.

3 Q. (Mr. Stevens) And no semen found on the  
4 swabs.

5 A. Correct. No acid phosphatase.

6 Q. Okay. Which was the test that they knew  
7 how to do to -- for the -- to detect the presence of  
8 semen.

9 A. The -- yeah, the presumptive test.

10 Q. Okay. But then when you conducted testing  
11 many years later, you did find some DNA, correct?

12 A. Yes, that's correct. Only on the vaginal  
13 swabs.

14 Q. Okay.

15 A. Well, we found DNA on the swabs, but we  
16 found male DNA on the vaginal swabs.

17 Q. Okay. Did it surprise you to find that  
18 when -- when nothing had been found earlier?

19 A. No.

20 Q. And why is that?

21 A. Because when you're looking at a smear,  
22 it's such a small portion of the overall sample  
23 versus when you're actually taking the swab material  
24 itself and extracting from that particular sample.  
25 So when you're using the swab to collect the sample



1 and then smearing it on a slide, you're relying on  
2 those cells basically forming off the swab and onto  
3 the slide, and then relying on someone visualizing  
4 it on the smear itself. There's a lot more material  
5 on the swab itself ---

6 Q. Okay.

7 A. --- that is available for testing.

8 Q. Okay. Did you conduct a microscopic  
9 examination of Doris's smears?

10 A. I did not.

11 Q. And why not?

12 A. I don't believe there was a question about  
13 whether there was sperm on there and you know what,  
14 now that you ask me that question, the microscopic  
15 exam I -- that I -- that I remember doing was on the  
16 microscope from the ME's office because I didn't  
17 look at any of these original smears.

18 Q. So you're saying ---

19 A. I did not ---

20 Q. --- there's a microscope exam -- a  
21 microscopic examination you did of the Nishonda  
22 smears?

23 A. Wait a minute. Let me think about that.  
24 Because they scraped 100 percent of them and  
25 analyzed it, so it would have been the smear from



1 A. Yes.

2 MS. HOFFMAN: Objection.

3 Q. (Mr. Stevens) There were not intact  
4 spermatozoa noted for the Doris samples or swabs or  
5 smears, correct?

6 A. That's correct.

7 Q. Is it fair to say that the -- the DNA that  
8 was found in Doris could have been contributed up to  
9 three to four days earlier at least?

10 MS. HOFFMAN: I'm sorry. I couldn't  
11 hear. Could you say that again?

12 Q. (Mr. Stevens) Is it fair to say that the  
13 DNA found in the Doris sample could have been  
14 contributed as much as three to four days earlier?

15 MS. HOFFMAN: Objection.

16 A. I wouldn't expect three to four days  
17 earlier simply because we did obtain a full -- a  
18 fairly full profile. I would -- in my experience,  
19 it was rare. I don't know that I've ever seen a  
20 profile like this in a sample that was collected  
21 three days after a sexual assault. I can't recall  
22 of a single instance where that's been the case.

23 My personal experience has been that I  
24 don't know that I've ever found any profile in  
25 somebody that had a sexual assault kit collected



1 three days after a sexual assault -- or profile --  
2 obtained a profile like in anybody that had a sexual  
3 assault kit collected three days after the  
4 occurrence.

5 Can I say it's impossible? No. I can't  
6 say anything is impossible. But I have not  
7 experienced a profile like this in something three  
8 to four days old.

9 Q. Have you experienced a profile like this  
10 in something two days?

11 A. I would say maybe two days at the outside.

12 Q. Okay. And again, this is based on your  
13 personal experience?

14 A. Yes.

15 Q. Okay. Is a ---

16 A. Oh, and -- and that -- that is from, you  
17 know, a situation where it's a live victim who's  
18 reporting this with -- you know, we had consensual  
19 sex two days ago -- or we had, excuse me -- I was  
20 raped two days ago and is going to have a kit  
21 collected for the first time.

22 It -- it is not very common to see these  
23 types. In -- in this, you have an injury in the  
24 vaginal vault that is diluting the DNA. And so, in  
25 somebody with -- with the blood that is being



1 deposited, it's going to be diluting anything that  
2 is there even more. So in this, I would think it  
3 would be more recent than two days.

4 Q. So on the one hand, let's -- let's assume  
5 that whatever the injury in the vagina that caused  
6 the blood to be there was something -- that would  
7 have been something that happened contemporaneously  
8 with the murder, most likely, correct?

9 A. Yes.

10 Q. Because of the blood-tinged fluid?

11 A. Well, nobody's going to allow a sharp  
12 instrument to be ---

13 Q. Okay.

14 A. --- inserted. But there's definitely  
15 blood in the vaginal vault area.

16 Q. Right. But about -- so somewhat  
17 contemporaneously with there being blood in the  
18 vaginal vault area ---

19 A. Yes.

20 Q. --- Doris Washington died, we assume,  
21 correct?

22 MR. BANNON: I'm sorry. I didn't  
23 hear that question. Would you mind saying that  
24 again?

25 Q. (Mr. Stevens) We're assuming that





1 somewhat -- that she died somewhat contemporaneously  
2 with this incision, correct?

3 A. The -- yes.

4 Q. Okay. And I think we discussed before  
5 that some of the processes that break down DNA slow  
6 down or cease with death, correct?

7 A. It continues to, but the activity that  
8 would normally happen with a live person prevents  
9 the loss because of the inactivity. But it doesn't  
10 stop the degradation.

11 Q. But -- so what we have with Doris  
12 Washington is a situation in which the medical  
13 examiner viewed stained slides and did not find any  
14 sperm on any of the samples, correct?

15 A. Correct.

16 Q. There was acid phosphalase -- phosphatase  
17 present ---

18 A. AP.

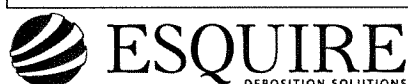
19 Q. AP testing conducted that was negative ---

20 A. Correct.

21 Q. --- correct? And there was -- the  
22 positive DNA result you got came from a vaginal  
23 swab.

24 A. Correct.

25 Q. And typically DNA can -- I mean, that's a



1 more hospitable environment for DNA than -- than the  
2 other, you know, either rectal or oral swabs,  
3 correct?

4 A. More so than the rectal, absolutely.  
5 Oral, you just have a constant flushing and so  
6 usually you don't see it in the oral cavity as long  
7 as you would a vaginal cavity.

8 Q. Okay. Are you familiar with any materials  
9 regarding best practices for connect -- collecting  
10 sexual assault case?

11 A. Am I fam -- I -- I'm sure there are some  
12 other there. I don't collect kits, so I have not  
13 reviewed any of them.

14 Q. Do you know or have any understanding of  
15 how long after a rape or sexual assault -- sexual  
16 assault nurses are instructed or told that they can  
17 collect rape kits?

18 A. Today?

19 Q. Yes.

20 A. Today, I know that they're in transition.  
21 Previously it had been 72 hours, but I believe  
22 they're in the process of changing that for up to  
23 five days.

24 Q. Okay. And are you familiar with any of  
25 the studies that -- that provide, sort of, peer



1 review -- peer reviewed reporting regarding how long  
2 sperm and/or DNA can remain and be found, you know,  
3 after -- after an assault or rape?

4 A. I -- I've read some literature. I -- I'm  
5 certainly not going to say I've read all of it, but  
6 certainly I have read some literature and I know  
7 that there has been literature, yes, that talks  
8 about it being recovered three to five days and I  
9 believe there's one that maybe had even gone up to  
10 seven. But I don't know all of the circumstances  
11 behind those.

12 Q. Okay.

13 A. And again, that's for today's technology.

14 Q. And you're saying today's technology is  
15 more sensitive than that from when you conducted  
16 your analysis in 2010?

17 A. Yes.

18 Q. Do you know what the standard would have  
19 been in 2010?

20 A. In 2010, I believe -- I think it was three  
21 days that they would have collected the sexual  
22 assault kits up to three days afterwards.

23 Q. It's certainly possible that Jermeck Jones  
24 had sex with Doris Washington three days before she  
25 was murdered and you still found the results that

1     you did in your testing, isn't it?

2             A.     Anything's possible, yes.

3             Q.     But it's more than just a theoretical  
4     possibility. I mean it -- that could have happened,  
5     correct?

6             A.     It's rare that this type of profile, using  
7     this technology in 2010, would have resulted in a  
8     profile for a sexual assault that occurred three  
9     days prior.

10            Q.     Okay.

11            A.     Again, I can't say it's impossible, but  
12     it...

13            Q.     Okay. And what does it tell you about  
14     when Jermeck Jones had sex with Doris Washington,  
15     that the -- the AP testing came out negative?

16            A.     Nothing. There are some people who are  
17     very low -- males who have low concentrations of AP.  
18     The fact that there was blood could have caused a  
19     negative reaction with the AP. The fire and high  
20     concentrations of heat could have caused the  
21     breakdown of AP. So really the lack of AP doesn't  
22     necessarily say anything about timing because of the  
23     external factors.

24            Q.     What percentage of rape kits or, you know,  
25     materials that you have tested, in which there were



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1 -- it was AP testing done, have -- have involved  
2 negative tests when someone had sex with a victim or  
3 assaulted the victim 12 hours or less before the  
4 event?

5 A. I'm sorry. Can you ask that again?

6 MR. BRANNON: I'm the same. I was  
7 hoping you'd say that.

8 Q. (Mr. Stevens) When you have reviewed  
9 materials from sexual assault kits, when you were  
10 aware that the sex had occurred at least 12 hours or  
11 less before the event and there was AP testing done,  
12 about what percentage of the time did that AP  
13 testing come out negative?

14 A. Typically the only time we would see AP  
15 tests come out negative is -- is if the woman was  
16 menstruating.

17 Q. Okay.

18 A. But within 12 hours, generally we would  
19 see a positive AP test.

20 Q. So normally you would see a positive AP  
21 test unless the woman is menstruating. And then,  
22 would you automatically -- if she was menstruating,  
23 would you automatically not see it or would it just  
24 be less likely?

25 A. Those were the situations where I would

1 not see it. It doesn't mean that it always wasn't  
2 seen. Sometimes you would still see it.

3 Q. Okay.

4 A. It was just a case-by-case basis.

5 Q. But it's fair to say that the majority of  
6 the time, when you are examining something,  
7 materials that had been donated within the past 12  
8 hours of the time that the, you know, the -- either  
9 of death or the collection of the materials, you  
10 would find the positive AP test.

11 A. Generally, yes, you would see the AP test.

12 Q. Okay. So if Doris Washington was not  
13 menstruating at the time, the odds are that Jermeck  
14 Jones had sex with her more than 12 hours before she  
15 died?

16 A. I -- I can't ---

17 MS. HOFFMAN: Objection.

18 A. --- say that. I'm sorry. I -- I can't  
19 say that.

20 Q. (Mr. Stevens) Okay. Why not?

21 A. Because there was -- even though she  
22 wasn't menstruating, there was still blood in her  
23 vaginal vault, so I don't know what effect that may  
24 have had on the acid phosphatase, if any.

25 Q. Okay. Is it fair to say that the negative



1 AP test is suggestive of -- of a sexual activity  
2 that occurred more than 12 hours before Doris  
3 Washington died?

4 MS. HOFFMAN: Objection.

5 A. It -- it certainly could.

6 Q. (Mr. Stevens) Okay. Is it fair to say  
7 that it's suggestive of sexual activity that  
8 occurred more than 15 hours before she died?

9 MS. HOFFMAN: Objection.

10 A. I mean, any of these possibilities could  
11 indicate. However, it's not -- I mean, I can't  
12 clearly say it does or it doesn't.

13 Q. (Mr. Stevens) Why don't we take a break  
14 for a couple minutes. I need to look at some notes  
15 for a minute. I don't have that much more.

16 (Off record: 2:03 p.m. to 2:06 p.m.)

17 Q. (Mr. Stevens) Back on the record. Thank  
18 you for your patience, Ms. Clement. The torture  
19 will end shortly.

20 Is it fair to say that the scientific  
21 opinions that you have to express were primarily set  
22 forth in your certificate of analysis in Exhibit D?

23 A. That my sci -- I'm sorry. That my  
24 scientific ---

25 Q. The ---

